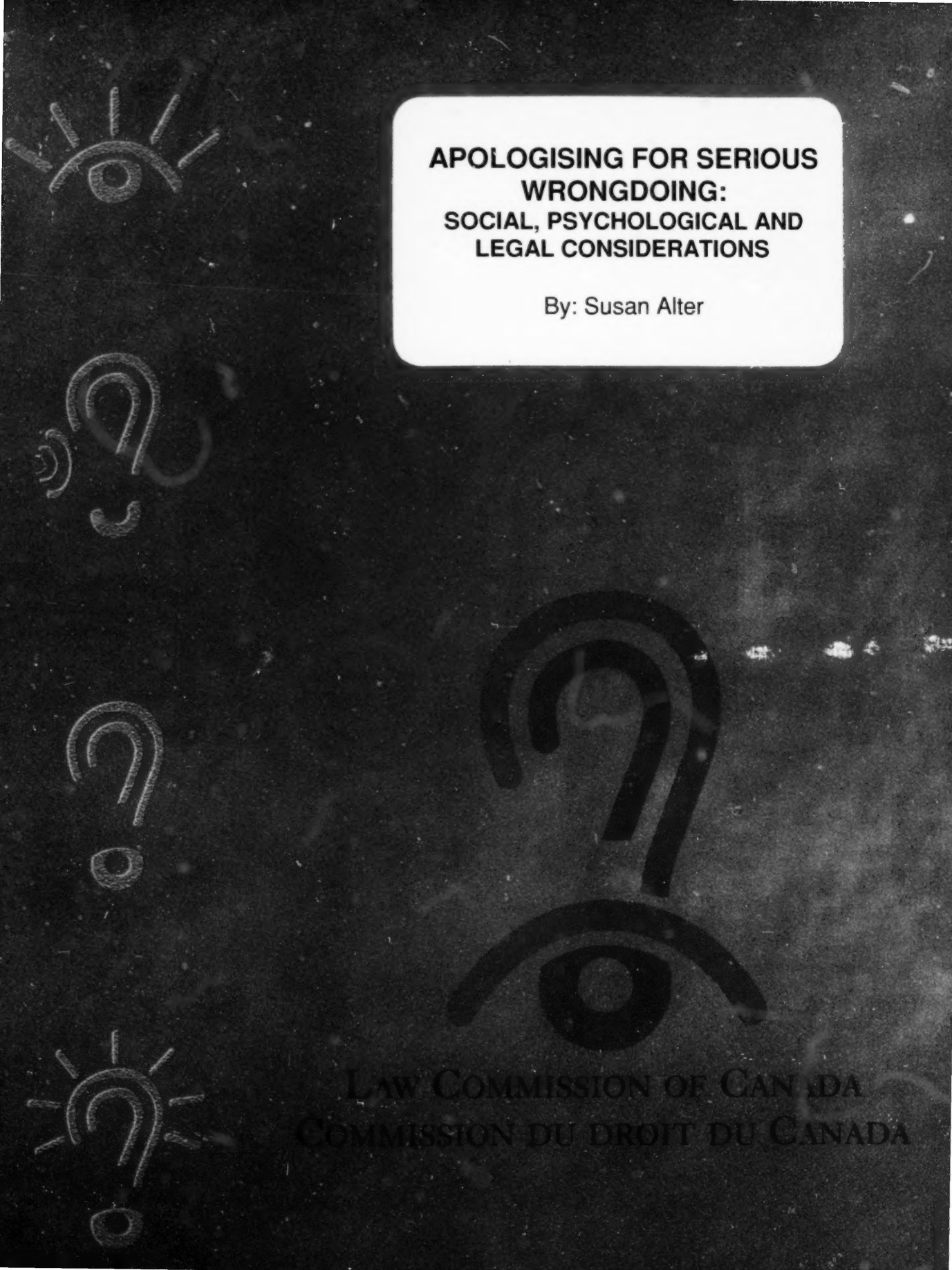
APOLOGISING FOR SERIOUS WRONGDOING:
SOCIAL, PSYCHOLOGICAL AND LEGAL CONSIDERATIONS

By: Susan Alter



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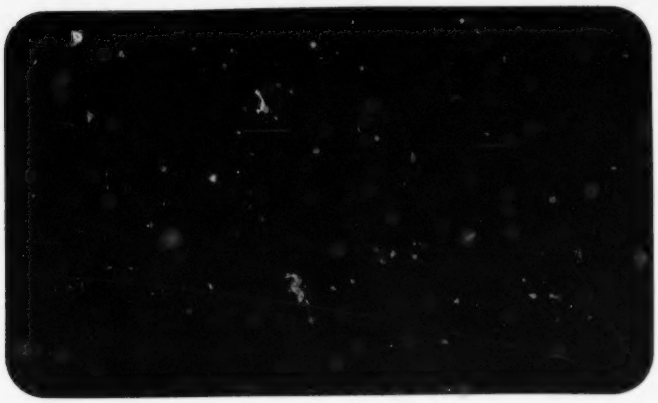

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Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations

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I. Outlining the Issues

People are exposed to a wide variety and large number of apologies during their lifetimes. At one end of the spectrum are the ever-present refrains of "I'm sorry" that pepper conversations whenever minor social transgressions occur. "I'm sorry I stepped on your toe." "I'm sorry I interrupted you." "I'm sorry I forgot our appointment." At the other end of the spectrum, and far less common, are expressions of deep and profound regret for causing another person serious anguish and hurt. It is this type of apology — one that seeks forgiveness for serious harm and injuries — that is considered here.

An apology made for causing serious harm to another person is a moral or ethical act, as well as an act of good conscience and a demonstration of respect. But adversarial legal processes often discourage those responsible for wrongdoing from apologising to their victims, lest their words of regret be construed as admissions of guilt or liability. Apologies are available as legal remedies only in specific conflict situations, such as cases of discrimination. Otherwise, apologies are not compulsory features of court based processes to right wrongs that have been committed. Occasionally, a convicted offender may utter an apology, voluntarily or in the hopes of reducing the punishment to be meted out to him. But, generally, apologies are rare courtroom occurrences.

The overall goal of an apology is to restore dignity and social harmony. These goals clearly are consistent with the goals of justice. Nevertheless, in practice, apologies are not widely used in our current legal system. Since apologies are considered tantamount to admitting responsibility, they are considered to be incompatible with mounting one's defence. To apologise and do the "right thing" morally and in the interests of justice is generally considered to be the "wrong thing" to do to defend oneself in the adversarial system.

When people commit or permit serious injury to others who are in their care — wrongs such as the sexual abuse of children in their institutions — the terrible violation and betrayal of trust experienced by the victims need to be addressed as effectively as

possible. Acknowledging the harm done and apologising for it are critical steps in making proper amends. For a victim, an apology is often considered to be the key that will unlock the door to healing. In light of the importance of apologies to survivors of institutional abuse, it is unfortunate and disturbing that traditional justice processes foster intransigence, disrespect and lack of remorse on the part of wrongdoers. This skewed result alone is reason to find alternatives to traditional legal processes — alternatives that will allow the legal imperative (the wrongdoer's right to proclaim his innocence and not incriminate himself) to be reconciled with and not trump the moral imperative (the survivor's need to secure an apology). Once the commitment is made to apologise, the wrongdoer should ensure that the apology is timely, sincere and appropriate. An apology, which the recipient finds is insincere, insufficient or otherwise unacceptable, can deal a crushing blow to an emotionally scarred survivor and re-open wounds.

The discussion that follows will closely examine apologies, from many angles, including the legal, social and psychological. Why apologies are necessary, what kind of apologies are requested in cases of abuse, what goes into making an apology that is meaningful for the survivor, and a comparison of various apologies made through court based and non-court based processes will be outlined.

II. Why Apologies are Necessary

> Although the conviction was important to them, it brought them no cheer. ... Instead, the man [Bergeron] continued the denial that he [Belecque] and the others had lived with their entire lives. "If the man had apologized, it would have meant a lot more to me", said Belecque.[1]

> I won't feel relieved until I get a letter of apology and public apology. Only then will I feel complete closure.[2]
> I expected an apology and got one. This was the most important part.[3]

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[1] D. Henton & D. McCann, *Boys Don't Cry -- The Struggle for Justice and Healing in Canada's Biggest Sex Abuse Scandal* (Toronto: McClelland & Stewart Inc, 1995) at 188 [hereinafter *Boys Don't Cry*].

[2] B. Feldthusen, O. Hankivsky & and L. Greaves, "Therapeutic Consequences of Civil Actions for Damages and Compensation Claims By Victims of Sexual Abuse," 12:1 C.J.W.L. [forthcoming in 1999] text accompanying note 26

Psychiatrist Aaron Lazare, who became interested in apology for its healing nature after studying shame and humiliation for many years, has identified four reasons or motives which wrongdoers have for making an apology. These four motives are: (1) to salvage or restore a damaged relationship; (2) to express regret and remorse for causing someone to suffer and to try to help diminish their pain; (3) to escape or reduce punishment; and (4) to relieve a guilty conscience.[4]

The motives behind an apology reveal what role an apology plays or, at least, what it might achieve, for the person delivering it. An apology is (1) a peace offering; (2) an act of humility and humanity; (3) a moderating force in the face of retribution; and (4) a mental salve.

The person who receives an apology — if it satisfies his or her expectations — can also experience significant benefits. An apology is a social transaction that involves a significant exchange of power, an exchange that is crucial for the restoration of balance and harmony. Lazare describes this exchange as follows:

> [W]hat makes an apology work is the exchange of shame and power between the offender and the offended. By apologizing, you take the shame of your offense and redirect it to yourself. You admit to hurting or diminishing someone and, in effect, say that you are really the one who is diminished — I'm the one who was wrong, mistaken, insensitive, or stupid. In acknowledging your shame you give the offended the power to forgive. The exchange is at the heart of the healing process.[5]

By admitting to the harm that was done, the wrongdoer recognises that his moral compass failed and he confirms that the injured party did not do anything wrong.[6] Consequently, the shame is transferred from the injured person to the wrongdoer. As well, by acknowledging the harmful actions done to the injured person and asking for

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[3] The anonymous words of a survivor in: Law Commission of Canada, *Review of "the Needs of Victims of Institutional Child Abuse"* by Institute for Human Resource Development (Ottawa: Law Commission of Canada, October 1998) "Appendix I - Survivors/Victims Interview Summaries" at 14 [hereinafter *IHRD Report*].

[4] A. Lazare, "Go Ahead, Say You're Sorry" *Psychology Today* 28:1 (January - February 1995) 40 at 42.

[5] *Ibid.*

[6] Obviously, a wrongdoer could also be female. When referring to the "wrongdoer" in this paper, however, only male adjectives and pronouns are used.

forgiveness, the wrongdoer assumes a position of vulnerability and places the injured person in control of the transaction. That person's dignity is restored. The injured person ends up in a position of strength.[7]

After the shift in power occurs by way of the apology, the recipient of the apology is left with the ultimate control. The recipient can choose whether or not to accept the apology, whether or not to forgive the wrongdoer.[8]

The wrongdoer should neither expect nor demand forgiveness, as Martha Minow observes:

> Forgiveness is a power held by the victimized, not a right to be claimed. The ability to dispense, but also to withhold, forgiveness is an ennobling capacity and part of the dignity to be reclaimed by those who survive the wrongdoing. Even an individual survivor who chooses to forgive cannot, properly, forgive in the name of other victims. To expect survivors to forgive is to heap yet another burden on them.[9]

Trudy Govier also recognises that forgiveness must be given freely, referring to Alice Miller who concluded: "[W]hen damaged people are urged to 'forgive', they are further harmed because they are put under pressure to suppress or amend their anger."[10] Govier goes on to note: "Miller's account is useful in forcefully reminding us of the basic sense in which victims have a moral first place. Fundamentally, it is victims who have been wronged and it is victims who need to recover."[11] She recognises, as well, that: "To forgive and be reconciled is to trust again. But sometimes we should not

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[7] M. Minow, *Between Vengeance and Forgiveness - Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998) at 114 - 15. Minow expresses the shifting positions of power as follows:

> The apology reminds the wrongdoer of community norms because the apology admits to violating them. By retelling the wrong and seeking acceptance, the apologizer assumes a position of vulnerability before not only the victims but also the larger community of literal or figurative witnesses. ... Equally important is the adoption of a stance that grants power to the victims, power to accept, refuse, or ignore the apology.

[8] N. Tavuchis, *Mea Culpa* (Stanford: Stanford University Press, 1991) at 23. Tavuchis describes the last phase of the apology as follows: "The final term in this moral equation is the response of the injured party: whether to accept and release by forgiving, to refuse and reject the offender, or to acknowledge the apology while deferring a decision."

[9] Minow, *supra* note 7 at 17.

[10] T. Govier, *Dilemmas of Trust* (Montreal & Kingston: McGill-Queen's University Press, 1998) at 199.

[11] *Ibid.* at 200.

begin to trust again, and we do so only with grave risk to ourselves."[12] At the same time, however, Govier is concerned that survivors be aware that forgiveness can bring benefits, along with the risks:

> In significant respects, forgiveness can also benefit the victim: it is good for her mental health. She relinquishes her feelings of anger, resentment, and hatred towards the offender, accepting that a wrong occurred, not diminishing that wrong, but being willing to move forward instead of dwelling on the past.[13]

She also emphasises that forgiveness does not require compromising one's sense of right and wrong:

> Forgiving does *not* mean excusing, condoning, ceasing to blame, losing respect for the victims, or forgetting that wrong-doing occurred. What happens in forgiving is that we relinquish our feeling of hatred and resentment and accept that the wrongdoer has repented and reformed.[14]

Clearly, apologising and forgiving are delicate processes that involve taking risks and acquiring benefits. Ultimately, each individual who receives an apology will have to wrestle with the questions of acceptance and forgiveness — this is the individual's moral right. However, to enable survivors to successfully assert this right in the first place, the people who have harmed them must fully appreciate the significance of their moral obligation to apologise, when an apology is requested.

Research into the needs of victims of institutional child abuse, carried out for the Law Commission by the Institute for Human Resource Development, reported that survivors need to receive apologies from those responsible for wrongdoing.[15] A separate study into the therapeutic effects of court and non-court based processes used to resolve claims of sexual abuse made very similar findings. The researchers involved in that study found the majority of claimants were driven more by the need to heal than financial needs. Specifically, "respondents consistently highlighted the desire to be

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[12] *Ibid.* at 201.

[13] *Ibid.* at 189.

[14] *Ibid.* at 197.

[15] *IHRD Report, supra* note 3 at 54.

heard, to have their abuse acknowledged and their experience validated, and to receive an apology."[16]

Events surrounding the negotiation of the Helpline Reconciliation Agreement illustrate the great importance survivors can attach to getting an apology. After two years spent trying to arrive at an agreement, the deal almost fell apart over the refusal of some parties to undertake to issue apologies.[17] The Agreement that was finally reached acknowledged the pivotal role of apologies in its opening paragraph:

> Apologies are at the heart of the reconciliation process. In fact, healing from the personal devastation of abuse cannot occur without apologies. Dedicated to reconciliation and healing, this Agreement wishes to facilitate apologies by those responsible where injuries are found to have occurred as a result of the process for validation of claims established in this Agreement. It is the aim of the Agreement to restore trust in the spiritual and secular institutions of society.[18]

The value of an apology, for the person who receives it, can actually be immeasurable. As a survivor of the Shelburne Youth Training Centre said, "I got an apology, and you can't put a price on that."[19]

In spite of the great importance that survivors attribute to apologies, sometimes leaders called upon to apologise for past wrongs have refused, on the grounds that history cannot be rewritten. Former Prime Minister Pierre Trudeau adopted this position in refusing to apologise to Japanese Canadian survivors of Canada's WWII internment camps. On his last day as Prime Minister, in the House of Commons, he dismissed the Leader of the Opposition's call for a formal apology, insisting that the purpose of the Government is not to right the past. "The Government cannot rewrite history", he said.

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[16] Feldthusen, Hankivsky & Greaves, *supra* note 2 at text "Findings-Motivations and Expectations".

[17] *Boys Don't Cry*, *supra* note 1 at 169.

[18] B. Hoffman, *The Search for Healing, Reconciliation, and the Promise of Prevention - The Recorder's Report Concerning Physical and Sexual Abuse At St. Joseph's and St. John's Training Schools for Boys*, a report prepared for the Reconciliation Process Implementation Committee (Ontario: Concorde Inc., 30 September 1995 and updated 29 April 1996) "Appendix A - Helpline Agreement" [hereinafter *Helpline Agreement*] at para. 2.01.

[19] *IHRD Report*, *supra* note 3 at 29.

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"It is our purpose to be just in our time and this is what we have done in bringing home the Charter of Rights."[20]

Apologies do not pretend or even aim to rewrite history. Their roles, as described above, are to facilitate reconciliation and healing. Apologies are about facing the facts, not about rewriting or reinventing the facts. As former Prime Minister Brian Mulroney recognised in 1988 when he offered his apology to Japanese Canadians in the House of Commons, "We cannot change the past. But we must, as a nation, have the courage to face up to these historical facts."[21] Martha Minow reflects a similar point of view in stating, "Apologies may restore some dignity, but not the lives as they existed before the violations."[22]

As a final note on the importance attached to apologies, it must be recognised that not every survivor feels an apology is imperative. Gilbert Oskaboose, for example, who describes himself as a survivor of ten years of "living hell" at Garnier Residential School for Indians in Spanish, Ontario, is adamant that apologies are not significant to him:

> I am not the slightest bit interested in your bloody apologies. Apologies are words and words are like dust in the wind. They mean nothing. You don't hurt somebody for ten years and then say "Geez, sorry about that", do a group "warm and fuzzy", and wander off into the pink sunset hand in hand. Doesn't work that way.[23]

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[20] M.Omatsu, *Bittersweet Passage - Redress and the Japanese Canadian Experience* (Toronto: Between the Lines, 1992) at 168.

[21] *House of Commons Debates* (22 September 1988) at 19499.

[22] Minow, *supra* note 7 at 93.

[23] Law Commission of Canada, *Needs and Expectations for Redress of Victims of Abuse at Residential Schools*, by R. Claes & D. Clifton (SAGE) (Ottawa: The Law Commission of Canada, October 1998) at Appendix 6 [hereinafter referred to as *SAGE Report*].

III. Two Kinds of Apologies Requested in Cases of Abuse

> Our people deserve no less than what was given to the Japanese Canadians in 1988 — a formal apology by the then Prime Minister of the country, ... on behalf of the House of Commons, on behalf of all parties in Parliament, on behalf of all Canadians ... . A formal apology.[24]

> I don't want an apology from you [Ottawa Roman Catholic Archbishop Marcel Gervais]. I want an apology from the brothers that ruined my life. I want an apology from those two dogs — those two pedophiles.[25]

Most adults who suffered abuse as children living in institutions want an apology, regardless of the nature of the abuse they suffered — physical, sexual, emotional, psychological, cultural, spiritual or any combination of these. The abuse they suffered has had very detrimental effects for them, their families, friends and communities.[26] The apologies required in these cases, therefore, are not the trite and polite chorus of "I'm sorries" uttered out of habit and by rote, during our daily interactions with each other. Survivors of childhood abuse expect well-considered and profound apologies — apologies that reflect a depth of understanding and feeling proportional to the damage done.

Survivors usually call for two particular kinds of apologies in these cases: (1) a personal, private apology or (2) an official, public apology. The wrongdoer makes a personal or individual apology directly to the survivor. It is an interpersonal, one-on-one and usually private transaction. It may be communicated face-to-face or by a personal letter. An official, public apology tends to be more formal and calculated, in the sense that it is constructed bearing in mind not only the sentiments of the injured parties (the direct recipients) but also society at large. The wrongdoer delivers this type of apology

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[24] From a public lecture by Ovide Mercredi, former Grand Chief of the Assembly of First Nations, University of Sudbury (Laurentian University), Sudbury, Ontario, reported by Canadian Press Wire (22 January 1998), online: QL (CPN) [hereinafter Mercredi].

[25] Paul Gagnon speaking out during a service at Notre Dame Cathedral, Ottawa, during which Ottawa Roman Catholic Archbishop, Marcel Gervais, delivered his church's official apology to survivors of St. Joseph's Training School in Alfred. Reported by Canadian Press Wire Service (21 April 1996), online: QL (CPN). See also A. Lindgren, "Abuse victims interrupt mass" *Ottawa Citizen* (21 April 1996).

[26] The nature of the abuse, which has taken place, is outlined extensively in other sources. See for example references contained in: Law Commission of Canada, *Institutional Child Abuse in Canada*, by R. Bessner (Ottawa: Law Commission of Canada, October 1998) and *SAGE Report, supra* note 23.

to the individual or group that was harmed in a public forum, such as a legislative assembly, a church or a meeting hall. An official, public apology is almost always set down in some permanent form or official, public record. Demanding a personal apology does not preclude also demanding a public apology. Sometimes survivors want to receive both types of apology; sometimes they want to receive only one or the other.

Looking at the main differences between personal and official, public apologies, can shed some light on why a survivor might prefer one to the other or might call for both types of apology. Two central features of a personal apology are that the wrongdoer must directly and exclusively address the injured individual and must express genuine, heartfelt regret or sadness. So, the direct expression of real regret is key to such an apology. As Nicholas Tavuchis notes: "Whatever else is said or conveyed, ... apology must express sorrow. If the injured party believes that the offender is genuinely sorry, additional reassurances are superfluous."[27]

Since a personal apology is addressed to a specific individual, it has the potential or the ability to recognise in very specific terms the harm that was done. A formal, public apology, on the other hand, tends to be less individualised because it usually addresses harm done to a number of people and, often, is delivered by someone speaking and acting in an official capacity, for example a government or church leader.[28] Although an official, public apology is less capable than a personal apology of recognising the harm suffered by each individual and of conveying heartfelt regret, it can serve a unique role. It has the potential to set the record straight and restore dignity to the person or group harmed, under full, public scrutiny.[29]

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[27] Tavuchis, *supra* note 8 at 36.

[28] Tavuchis notes that in the formal, official and public world of apologising, "the interlocutors are not autonomous persons at liberty to act according to their own moral lights but occupants of institutionally designated offices or positions whose functions are defined and circumscribed by collective goals and interests. ...[A]s public representatives, those who convey the apology must conform to conventional standards of decorum and protocol." (*ibid.* at 100).

[29] Tavuchis outlines the differences inherent in an official apology:

> Here ... we find a distinct mode of articulation that differs conspicuously from its interpersonal counterpart. As befits its formal, official, and public character, institutionally licensed and scripted apology tends to be couched in abstract, remote, measured, and emotionally neutral terms. However sincere or faithful to a conciliatory spirit, representative speech composed for the record establishes and preserves a social and hence linguistic distance between those empowered to speak, on the one hand, and the actual

> Here the offender is summoned into a world of records, social bookkeeping, and punctiliousness in which the speech act itself, *qua* performance, becomes paramount. And in such a world, everything counting as the apology must be spelled out; nothing can be taken for granted or remain ambiguous. Thus the energies of the One [making the official, public apology] are invested in display, and the overriding interest of the Many [those receiving the apology] is to put the apology "on record", that is, to extract a public, chronicled recantation that restores those aspects of the collectivity's integrity and honor called into question by the offense.[30]

Considering the differences between personal apologies and official, public apologies, a survivor wanting one type of apology but able only to get the other type is likely to feel quite frustrated and dissatisfied. The fact that one type of apology cannot substitute for the other was clearly demonstrated by the man who yelled out in the midst of Archbishop Gervais' official apology to survivors of St. Joseph's Training School:

> I don't want an apology from you. I want an apology from the Brother that did me. He ruined my life that dog! I don't need an apology from you. You had nothing to do with what he did to me. I want an apology from him![31]

The most well-known official, public apologies in Canada are those that have attracted widespread media attention, such as Quebec Premier Lucien Bouchard's apology to the Duplessis Orphans in the National Assembly (March 1999),[32] federal Minister of Indian Affairs and Northern Development Jane Stewart's Statement of Reconciliation to Aboriginal people (January 1998),[33] and then Prime Minister Brian Mulroney's apology to Japanese Canadians (September 1988).[34] The four churches

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protagonists, on the other. These tendencies, it should be noted, are not merely by-products of mediated speech but also stem from the discursive and practical obstacles in addressing a collective bill of particulars that documents numerous personal injuries, deprivations, and suffering, often far removed in time from the present. (*ibid.* at 102).

[30] *Ibid.* at 71.

[31] "Apologies," Part 2, a radio documentary produced by P. Naylor for the CBC Radio program *Tapestry* (Toronto: 22 June 1997) [hereinafter "Apologies"].

[32] Quebec, National Assembly, *Débats de l'Assemblée nationale* (4 March 1999), online: <http://www.assnat.qc.ca>(date accessed: 15 November 1999).

[33] See "Statement of Reconciliation" included in an Address by the Honourable Jane Stewart Minister of Indian Affairs and Northern Development on the occasion of the unveiling of *Gathering Strength -- Canada's Aboriginal Action Plan* (Ottawa: Department of Indian Affairs and Northern Development, 7 January 1998), online: <http://www.inac.gc.ca. >(date accessed: 16 February 1999). [hereinafter "Statement of Reconciliation"].

[34] *House of Commons Debates, supra* note 21 at 19499 – 19500.

involved in the residential schooling of Aboriginal children in Canada also have made very public apologies.[35]

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[35] Examples of these and other official apologies include:

Apologies from Churches involved in Aboriginal Residential Schools -

The Missionary Oblates of Mary Immaculate (1991) - Apology from the President of the Oblate Conference of Canada, the Reverend Doug Crosby, on behalf of the 1200 Catholic Missionary Oblates of Mary Immaculate living and ministering in Canada, for the role played by the Oblates of Canada in running Native Residential Schools. See Reverend D. Crosby, "An Apology to the First Nations of Canada by the Oblate Conference of Canada" (Edmonton: Oblate Conference of Canada 1991) [hereinafter *Missionary Oblates of Mary Immaculate Apology*]. For excerpts of this apology see Assembly of First Nations Health Secretariat, *Residential School Update* (Ottawa: Assembly of First Nations, March 1998) at 20.

Anglican Church of Canada (1993) - Message from the Primate, Michael Peers, apologising for the part the Anglican Church played in the suffering inflicted at Residential Schools. Delivered at the National Native Convocation, (Minaki, Ontario, 6 August 1993). See Anglican Church of Canada, News Release, "Anglican leader apologizes to aboriginal people for residential schools" (8 August 1993) [hereinafter *Anglican Apology*], with full text of apology and response attached to the news release. Recorded live on videotape in *Dancing the Dream*, produced for the Anglican Church of Canada (Toronto: Anglican Video for the Council for Native Ministries / Anglican Church of Canada distributor, 1993) 29:44 min. at 23 min. [hereinafter *Dancing the Dream*].

Presbyterian Church of Canada (1994) – The Confession of the Presbyterian Church as Adopted by the General Assembly held in Winnipeg (North York: The Presbyterian Church in Canada, 9 June 1994) [hereinafter *Presbyterian Apology*].

Bishop of Churchill-Hudson Bay (1996) - Apology from Reynald Rouleau, Catholic Bishop of Churchill-Hudson Bay, to the former students of Joseph Bernier Federal Day School and Turquetil Hall. See Letter from Reynald Rouleau, Bishop of Churchill-Hudson Bay, Diocese of Churchill-Hudson Bay, Churchill, Manitoba, to The Former Students of Joseph Bernier Federal Day School and Turquetil Hall (1955-1969) (18 January 1996).

St. Andrew's United Church (1997) - "An Apology from St. Andrew's United Church [Alberni, B.C.] to First Nations People For Harm Caused by "Indian" Residential Schools" (May 1997).

United Church of Canada (1998) - Apology for the Church's complicity in the Indian Residential School system. Made by the Right Reverend Bill Phipps, Moderator of the United Church of Canada, "United Church apologizes for its complicity in the Indian School System" (Toronto: 27 October 1998) online: <http://www.uccan.org>(date accessed: 17 February 1999) [hereinafter *United Church 1998 Apology*].

Other Apologies from Church-related Organisations -

Mennonite Central Committee Canada (1984) - Apology to Canadians of Japanese ancestry (October 1984) because some Mennonites had benefited from their misery by buying their government-confiscated property, especially farms in the lower Fraser Valley. Reported in R. Miki & C. Kobayashi, *Justice in Our Time - The Japanese Canadian Redress Settlement* (Vancouver: Talonbooks, 1991) at 80.

Jesuit Fathers of Upper Canada (1994) - Apology for sexual abuse suffered, to the primary victims of the late George Epoch in *Reconciliation Agreement Between the Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada* [hereinafter *Jesuit Apology*] Schedule F, at 35.

Other Government Apologies -

British Columbia Government (1995) - Ministerial Statement on Report on Abuse of Students at Jericho Hill School, Legislative Assembly, *Debates Hansard* (28 June 1995) online: <http://www.legis.gov.bc.ca/1995/hansard>(date accessed: 26 March 1999) [hereinafter *B.C. Hansard*].

Nova Scotia Government (1996) - The Honourable William Gillis, Minister of Justice, apologised in the Nova Scotia legislature on 3 May 1996, to victims of abuse which occurred at five provincially-operated institutions. The words of apology were incorporated in the Minister's announcement of the compensation package that the government would be providing to these survivors. Legislative Assembly,

Here are portions of some of these official apologies:

The Right Honourable Brian Mulroney (1988):

> Most of us in our own lives have had occasion to regret certain things that we have done. Error is an ingredient of humanity, so too is apology and forgiveness. We all have learned from personal experience that as inadequate as apologies are they are the only way we can cleanse the past so that we may, as best we can, in good conscience face the future.
>
> I know I speak for Members on all sides of the House today in offering to Japanese Canadians the formal and sincere apology of this Parliament for those past injustices against them, against their families, and against their heritage, and our solemn commitment and undertaking to Canadians of every origin that such violations will never again in this country be countenanced or repeated.[36]

Primate Michael Peers (1993):

> I acknowledge and I confess before you and before God our failures in the residential schools. We failed you. We failed ourselves. We failed God. I am sorry more than I can say that we tried to remake you in our image. I am sorry more that I can say that in our schools so many were abused physically, sexually, culturally, emotionally. And from myself and from the Anglican Church of Canada, I offer my apology.
>
> I know how often you have heard words that sound empty because they were unaccompanied by actions. I pledge to you my best efforts, and the best efforts of the church at the national level, to walk with you on the path of healing.[37]

Debates Hansard (3 May 1996), online: <http://www.gov.ns.ca/legi/hansard>(date accessed: 6 April 1999).

Ontario Government (1996) - Apology for child abuse made to the survivors of St. Joseph's and St. John's Training Schools, Legislative Assembly, *Debates Hansard* (25 June 1996), online:

<http://www.ontla.on.ca/hansard>(date accessed: 26 March 1999). See also, W. McCann, *Canadian Press Wire Service* "Ontario Government Apologizes to Sex Abuse Victims" (25 June 1996).

New South Wales Parliament, Australia (1997) - Motion of unreserved apology to Aboriginal people for the systematic separation of generations of Aboriginal children from their parents. Moved by Premier Bob Carr and fully supported by Opposition Leader Peter Collins. See Australia, Human Rights and Equal Opportunity Commission, Media Release, "NSW Parliamentary Apology - Commission commends Premier Bob Carr and Opposition Leader Peter Collins" (9 June 1997), online: <http://www.hreoc.gov.au//social_justice/stolen_children>(date accessed: 17 February 1999).

Parliament of Victoria, Australia (1997) - Motion of apology to Aboriginal people for the past policies under which Aboriginal children were removed from their families. Moved by Premier Kennett, *Parliament of Victoria Hansard Peruse* (17 September 1997), online: <http://www.vicnet.net.au>(date accessed: 2 March 1999).

[36] *House of Commons Debates*, *supra* note 21 at 19500.

[37] *Dancing the Dream*, *supra* note 35 at approximately 23 min.

The Honourable Jane Stewart (1998):

> Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations. ...
>
> The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together.[38]

Right Reverend Bill Phipps (1998):

> On behalf of The United Church of Canada I apologise for the pain and suffering that our church's involvement in the Indian Residential School system has caused. We are aware of some of the damage that this cruel and ill-conceived system of assimilation has perpetrated on Canada's First Nations peoples. For this we are truly and most humbly sorry.
>
> To those individuals who were physically, sexually and mentally abused as students of the Indian Residential Schools in which the United Church was involved, I offer you our most sincere apology. You did nothing wrong. You were and are the victims of evil acts that cannot under any circumstances be justified or excused. We pray that you will hear the sincerity of our words today and that you will witness the living out of this apology in our actions in the future.[39]

Unlike official apologies, words of personal apology are usually not seen or heard by the public because of the private nature of these apologies. It is only if a personal apology is made or reported publicly that others, aside from the direct recipient, become aware of what was said. For example, when Francis Clancy, a former employee of Mount Cashel Orphanage, pleaded guilty in provincial court to two counts of sexual assault, he apologised directly to his victims. His apology was published in the local newspaper: "I'm very sorry, gentlemen, for offending you", he said.[40]

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[38] "Statement of Reconciliation", *supra* note 33.

[39] United Church of Canada, News Release, "United Church apologizes for its complicity in the Indian Residential School System (27 October 1998).

[40] B. Belec, "Ex-Cashel worker guilty, apologizes to victims " *The [St. John's] Evening Telegram* (21 October 1998).

When wrongdoers issue or offer apologies, whether personal or official and public, they will not necessarily satisfy the recipients or be vindicated. An apology, even if accompanied by the best of intentions, may be insufficient. Some apologies will be outright failures. In order to produce apologies that are meaningful for the recipients and, therefore, which succeed, certain ingredients are fundamental. Their inclusion in the apology might not guarantee success but their omission is likely to ensure failure. These ingredients are discussed next.

IV. What Goes Into Making a *Meaningful* Apology?

> [T]he production of a satisfactory apology is a delicate and precarious transaction.[41]

> There's a right way and a wrong way to apologize. There are several integral elements of any apology and unless they are accounted for, an apology is likely to fail.[42]

A. Fundamental Elements of a Meaningful Apology

Studies of the anatomy or ingredients of apologies, carried out by social and behavioural scientists and other professionals, reveal five elements that are key to making a meaningful apology. These basic elements, which will be discussed below, are:

1. Acknowledgement of the wrong done or naming the offence;
2. Accepting responsibility for the wrong that was done;
3. The expression of sincere regret and profound remorse;
4. The assurance or promise that the wrong done will not recur; and
5. Reparation through concrete measures.[43]

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[41] Tavuchis, *supra* note 8 at 15.

[42] Lazare, *supra* note 4 at 42.

[43] These five elements are drawn and compiled from various sources (Lazare *ibid.*; Tavuchis, *supra* note 8; Minow *supra* note 7; and Govier *supra* note 10; cited in the discussion that follows, as well as from consultations with survivors. A similar, but not identical, configuration of five elements is proposed in H.

Leaving any of these elements out of an apology can put the apology at risk of failure and potentially cause deep disappointment for the recipient. These elements, therefore, offer guidance on *what* to include in formulating an apology that will be meaningful for the recipient or, at least, what not to leave out. In addition, since apologising is a social process or transaction, the apologiser must also give careful consideration to *how* this process unfolds. Governments and organisations, collectively, have gained much practical experience, particularly in the last decade, in developing official apologies. Practical considerations to include in developing apologies, which can be mined from these experiences, will be addressed immediately following the discussion of the key elements of a meaningful apology.

1. Acknowledgement of the Wrong Done

The first step in making a meaningful apology is naming the wrong that was done. Many survivors, in calling for apologies, have said they want the wrongdoers to acknowledge what they did and that it was wrong. In effect, they are asking the wrongdoers to admit to them that they know they violated moral standards. Such admissions validate the injured parties' moral sensibilities, which were violated by the wrongs done. The acknowledgement begins the process of balancing or restoring the relationship between the two parties (for example, righting the moral imbalance between an abuser and his victim). As Aaron Lazare has noted: "By acknowledging that a moral norm was violated, both parties affirm a similar set of values. The apology [acknowledgement] re-establishes a common moral ground."[44]

Wagatsuma & A. Rosett, "The Implications of Apology: Law and Culture in Japan and the United States" (1986) 20: 4 Law & Society Review 461 at 469:

1. the hurtful act happened, caused injury, and was wrongful;
2. the apologizer was at fault and regrets participating in the act;
3. the apologizer will compensate the injured party;
4. the act will not happen again; and
5. the apologizer intends to work for good relations in the future.

[44] Lazare, *supra* note 4 at 42.

Lazare also highlights the importance of facing the facts and being specific about the wrong that was done: "You must name the offense — no glossing over in generalities like, 'I'm sorry for what I have done.' To be a success the apology has to be specific ... ."[45] If the apoligiser is vague or does not acknowledge the harm done, the recipient may conclude that he doesn't truly understand the immorality of his actions. And if this is not understood, then can the apologiser be truly sorry?[46]

Finally, Lazare suggests that in naming the offence, the wrongdoer must also show he understands the impact of his deeds — " 'I know I hurt you and I am so very sorry.' "[47] This aspect of the acknowledgement links to another fundamental aspect of a meaningful apology: demonstrating true remorse. After all, if the impact is not understood, how can the apologiser truly feel sorry?

2. Accepting Responsibility for the Wrong Done

The apologiser must demonstrate to the recipient that he accepts responsibility for what happened. By accepting responsibility, the apologiser helps restore the confidence or trust of the injured party. "This lets the offended person know that he should feel safe with you now and in the future."[48]

Minow observes that accepting responsibility is *the* key to making an apology — without this, there is no apology. She also notes that the necessity for the wrongdoer to assume responsibility for his actions is what makes an apology so effective for the person who receives it:

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[45] *Ibid.* at 42.

[46] The question whether there can be remorse without acknowledgement of the actual harm caused arose in the controversy surrounding the healing circle in which Bishop Hubert O'Connor participated. In lieu of facing a third trial on charges of sexual assault, Bishop O'Connor agreed to participate in a healing circle where he apparently apologised for "breaking his vow of chastity." Some critics of this process suggest O'Connor showed no remorse in that he did not acknowledge the actual harm he did by assaulting his victims. See M. McLean, "Circle Sentencing" *Jurisfemme* 18:1 (Fall 1998) at 4.

[47] Lazare, *supra* note 4 at 42.

[48] *Ibid.* at 43.

> Any diversion from accepting responsibility is not an apology. Because of this stringent requirement, an apology may indeed afford victims and bystanders something that trials, truth-telling [commissions], and monetary reparations or property restitution cannot. Full acceptance of responsibility by the wrongdoer is the hallmark of an apology.[49]

The apologies offered in the House of Commons to Canadians of Japanese heritage, by the leaders of the day, accepted full and unqualified responsibility for the wrongs committed by the Government of Canada in the 1940s. Then Prime Minister Brian Mulroney stated:

> Mr. Speaker, nearly half a century ago, in the crisis of wartime, the Government of Canada wrongfully incarcerated, seized the property [of], and disenfranchised thousands of citizens of Japanese ancestry. We cannot change the past. But we must, as a nation, have the courage to face up to these historical facts.[50]

Ed Broadbent, then the leader of the New Democratic Party, clearly named the wrongs that were done and acknowledged that the Government of Canada, of the 1940s and of the day, was responsible:

> In the 1940s our Government, a democratically elected Government, did a great injustice to some 22,000 of our citizens, a permanent injustice to those who are no longer living. This was done, not because of what they had done, but because of who they were. These Japanese Canadians had their families broken up, their property confiscated, their businesses destroyed. They were forced to abandon their homes on the coast of British Columbia and they were forced to move to the interior and elsewhere in Canada.
>
> They, as Canadian citizens, had done no wrong. They were the victims of intolerance and racism brought about, not because we were at war with them but because we were at war with the land of their ancestors. They had done no wrong to any of their fellow citizens.
>
> ... Our predecessors in this great Chamber of ours made errors. One of the important and fundamental ways of addressing these errors is at least to apologize publicly and acknowledge the serious wrong that was done, and that we are doing.[51]

Accepting responsibility is probably the most delicate and potentially explosive aspect of making a meaningful apology. The apologiser, wishing to save face for

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[49] Minow, *supra* note 7 at 115.

[50] *House of Commons Debates*, *supra* note 21 at 19499.

[51] *Ibid.* at 19501.

himself or others, might be inclined to accompany his acceptance of responsibility with an explanation for why the wrongdoing occurred. However, an ill-considered or carelessly executed explanation, can easily turn into a defence or excuse for actions that, in reality, are inexcusable. Defensiveness or excuses will more than likely add to the hurt felt by the injured party rather than help to alleviate it.[52] Therefore, from the perspective of the injured party an unqualified acceptance of responsibility — words that admit responsibility without attaching explanations — is probably best.

Understanding the potential dangers of explanations or excuses, Tavuchis recommends avoiding them altogether. He maintains that an apology should not be diluted by explanations or buttressed by excuses. He observes that explanations, no matter how sincere, and excuses, no matter how seemingly compelling, send the message (to the person receiving the apology) that the apologiser is trying to distance himself or detach himself from the wrong done. According to Tavuchis, an apology should not aim to distance, but only to acknowledge: "An apology ... requires *not* detachment but acknowledgement and painful embracement of our deeds, coupled with a declaration of regret."[53] He adds, "To apologize is to declare voluntarily that one has *no* excuse, defense, justification, or explanation for an action (or inaction) that has 'insulted, failed, injured, or wronged another'."[54]

If one, nevertheless, feels compelled to offer an explanation, the most appropriate approach simply may be to admit to the injured party, "I have no excuse for what I did. Clearly, it was wrong." The Missionary Oblates of Mary Immaculate offered this type of "explanation" in apologising for instances of individual physical and sexual

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[52] For example, the potential impact of excuses, which in effect attempt to transfer blame to others, is addressed by the BC Ombudsman in her report about the BC government's apprehension and confinement of Doukhobor children during the 1950s. In this report the Ombudsman recommends that the government make an unconditional, clear and public apology to the now adult survivors of this terrible childhood experience and she states: "Government must focus on what transpired for the children while confined and not rationalize the State's conduct based on events relating to the adult parents involved. Such a focus would only serve to re-victimize and re-injure these children who are now adults living with the memories and the trauma." Ombudsman of British Columbia, *Public Report No. 38: Righting the Wrong - The Confinement of Sons of Freedom Doukhobor Children* (Public Report No. 38) by D. McCallum (Victoria, B.C.: Office of the BC Ombudsman, April 1999) at 2. This report is posted online: <http://www.ombud.gov.bc.ca> (date accessed: 13 April 1999).

[53] Tavuchis, *supra* note 8 at 19.

abuse in Native Residential Schools: "Far from attempting to defend or rationalize these cases of abuse in any way, we wish to state publicly that we acknowledge that they were inexcusable, intolerable and a betrayal of trust in one of its most serious forms."[55] British Columbia's Attorney General did the same, in apologising to the students violated at Jericho Hill School: "The events [the sexual abuse] ... should never have occurred. There is no excuse or justification for what happened. The victims bear no responsibility for events over which they had no control."[56]

By admitting to having no explanation, by resisting the temptation to try to hide one's shame behind hollow-sounding justifications, the apologiser demonstrates humility and acceptance of full responsibility for the wrong that was done. Ultimately, the way in which the apologiser demonstrates that he accepts responsibility for what happened will signal to the recipient whether the apologiser is really trying to make a meaningful apology.

If the recipient concludes that the apologiser is not taking responsibility for the wrong done, the apology is destined to fail.[57] Lazare notes that the main reason public apologies so often do not succeed is because "the offender fails to admit or take responsibility for what he has done".[58]

3. Expression of Sincere Regret and Profound Remorse

Tavuchis says that the "centrepiece" of an apology "is an expression of sorrow and regret".[59] When the apologiser expresses sincere remorse for the wrong he

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[54] *Ibid.* at 17.

[55] *Missionary Oblates of Mary Immaculate Apology*, *supra* note 35 at 2.

[56] *B.C. Hansard*, *supra* note 35.

[57] For example, Dean Miller, a former altar boy who had been abused by Reverend Jim Hickey, was insulted and felt anger and despair, after receiving a written apology from the Archbishop of St. John's. The apology was part of an overall settlement offered by the Roman Catholic Church to a number of former altar boys who had been sexually abused by priests in Newfoundland. "All the letter does is apologize for the church not helping us out after the fact. Nowhere does the church take responsibility for having allowed these abuses to occur," Miller said. See "Church apology no balm for victim" *Canadian Press Wire Service* (27 October 1997), online: QL (CPN).

[58] Lazare, *supra* note 4 at 76.

[59] Tavuchis, *supra* note 8 at 23.

committed or permitted to happen, then the person receiving the apology is reassured both that he understands the extent of the injury that was committed and probably, therefore, will not allow it to happen again. These assurances, in turn, open the door for the injured party to forgive.[60]

The most sincere expressions of regret are spoken and witnessed first hand. The depth of an apologiser's remorse is difficult to gauge in a written apology. Written words conceal the emotion expressed by a tone of voice or tears clouding the eyes. Whether an apology is made orally or in writing, however, the apologiser must somehow communicate regret from the heart.

The Primate of the Anglican Church of Canada, Michael Peers, apologised on August 6th, 1993, with intense feeling and in person to a convocation of Aboriginal members, many of whom were survivors of Native Residential Schools.[61] The following day, Vi Smith acknowledged and accepted his apology, on behalf of the Elders and participants gathered there because: "It was offered from his heart with sincerity, sensitivity, compassion and humility."[62]

> A good apology also has to make you suffer. You have to express genuine, soul-searching regret for your apology to be taken as sincere. Unless you communicate guilt, anxiety, and shame, people are going to question the depth of your remorse.[63]

4. Assurance or Promise that the Wrong Will Not Recur

Survivors of serious abuse need to be assured that the injury they experienced will not happen to them, or anyone else, again. For example, a woman who participated in a victim-offender mediation program, and who received and accepted a personal apology from the man who raped her 10 years earlier, tells the journalist interviewing her that she needs something else from her abuser: "There's probably a few loose ends that

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[60] Govier, *supra* note 10 at 185: "A foundation of forgiveness is the belief that the wrongdoer not only accepts that what he did was wrong but sincerely regrets it and is committed not to do it again."

[61] *Dancing the Dream*, *supra* note 35 at 23 min.

[62] *Anglican Apology*, *supra* note 35 at 2.

[63] Lazare, *supra* note 4 at 43.

he and I need to talk about. I want to be able to say to him, 'You won't do this again, will you? I can trust you, can't I?... If you get out of prison, you won't hurt me, will you?' "[64]

In situations where official, public apologies are made, survivors also want affirmation from the officials responsible that they will ensure that the mistakes of the past are not repeated. At a press conference, Toronto Maple Leafs owner Steve Stavro publicly promised victims and their families that his hockey club would ensure that Leafs' employees would never sexually abuse children again.[65] Federal Minister of Indian Affairs, Jane Stewart, acknowledged in her Statement of Reconciliation to the Aboriginal people of Canada that: "In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated."[66] British Columbia Attorney General Colin Gablemann concluded his government's public apology to survivors of Jericho Hill School with the commitment "to do all in our power to prevent abuse from happening in the future and to speed the healing process where it has happened in the past".[67] And, Prime Minister Brian Mulroney, apologising to Japanese Canadians from the floor of the House of Commons for the treatment they received during the Second World War, gave Parliament's "solemn commitment and undertaking to Canadians of every origin that such violations will never again in this country be countenanced or repeated".[68]

Just as acknowledging the harm done can serve to set the record straight or reclaim the moral ground lost, when making an official apology, formally undertaking to ensure that the wrong done will not recur can provide much-needed reassurance that the reclaimed moral ground will not be lost.

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[64] "Apologies," *supra* note 31, Part 1 (15 June 1997).

[65] M. Ulmer, "Abuse victims get apology from Gardens" *Ottawa Citizen* (24 January 1998).

[66] "Statement of Reconciliation", *supra* note 33.

[67] *B.C. Hansard*, *supra* note 35.

5. Reparation through Concrete Measures

Following serious wrongdoing, mere words of apology are not enough to restore social harmony and repair damaged relationships. The injuries committed, such as the relationships of trust shattered by adults abusing children, are too serious to be appeased by words alone. The words offered in these cases must be accompanied by concrete measures, such as financial compensation or access to spiritual and psychological counselling. Concrete measures help to translate the static message of apology into an active process of reconciliation and healing.

Official apologies, in particular, need to be accompanied by direct and immediate actions, as Minow notes:

> Official apologies can correct a public record, afford public acknowledgement of a violation, assign responsibility, and reassert the moral baseline to define violations of basic norms. They are less good at warranting any promise about the future, given the shifts in officeholders. Unless accompanied by direct and immediate actions (such as payments of compensation) that manifest responsibility for the violation, the official apology may seem superficial, insincere, or meaningless.[69]

In 1994, for example, the United Church of Canada recognised that "repentance and reconciliation involve action as well as words of apology" [70] and it established the Healing Fund to help finance healing initiatives within Aboriginal communities.[71] To demonstrate the federal government's commitment to a renewed relationship with Aboriginal peoples in Canada and to help them deal with the legacy of physical and sexual abuse suffered in the Residential School system, the Minister of Indian Affairs announced, in conjunction with her Statement of Reconciliation, that the Government of Canada would be allocating $350 million to assist the development of community-based

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[68] *House of Commons Debates*, *supra* note 21 at 19500.

[69] Minow, *supra* note 7 at 116.

[70] United Church of Canada, *Why the Healing Fund? The United Church Response*, a United Church of Canada booklet published by the Church about its Healing Fund (Toronto: undated) at 3.

[71] United Church of Canada News Release, "United Church names David MacDonald as special advisor" (25 November 1998), online: <http://www.uccan.org/NewsRelease/981125.htm>(date accessed: 17 February 1999).

healing initiatives.[72] And, to accompany the official apology that Parliament delivered to Japanese Canadians in 1988, the Government introduced a series of tangible redress measures including "symbolic redress payments of $21,000 to eligible Canadians of Japanese ancestry ... who were relocated, interned and/or deported ... [and] $12 million for the Japanese Canadian community to be administered by the National Association of Japanese Canadians (NAJC) for activities to promote the educational, social and cultural well-being of the community or that promote human rights ...".[73]

B. Practical Considerations in Making a Meaningful Apology

The process of developing and presenting an official apology (whether personal or public) can be as crucial to its success as the contents of the actual apology. Apologising is an interactive exchange between the parties involved. Therefore, doing it effectively is as much about getting the process right as it is about getting the contents right.

1. Freedom to Request an Apology

Since not all survivors of institutional child abuse want to have an apology, survivors should be free to choose whether or not they actually want an individual apology. This choice empowers them.

It may be that an official, public apology requested by a group of survivors will end up being received by some individuals who did not want to hear it. In a public forum, and where survivors are not unanimous about the need for an apology, this outcome is inevitable. However, a personal apology can be delivered exclusively upon request, and should be.

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[72] Department of Indian Affairs and Northern Development, News Release, "Canada's Aboriginal Action Plan Focused on Communities, Founded on Reconciliation and Renewal" (7 January 1998). The Aboriginal Healing Foundation, a not for profit corporation, was established April 1, 1998, to administer the $350 million grant. For more information see, The Aboriginal Healing Foundation, *Program Handbook 1999* (Ottawa: 1998) at 1, online: <http://www.ahf.ca>(date accessed: 15 November 1999).

For example, the Reconciliation Agreement between the primary victims of George Epoch and the Jesuit Fathers of Upper Canada, which entitled every "validated claimant" to an individual apology, required them to exercise the option to receive an apology by completing a "Request for Apology" form. On this request form, survivors were invited, as well, to outline what they wished their personal apology to include.[74]

2. Freedom to Choose the Type of Apology

Since survivors usually call for a personal apology, an official-public apology, or both, they must be given the opportunity to select the type of apology they want. These choices can be offered through non-court based reconciliation processes.

The Helpline Agreement involving survivors of St. John's and St. Joseph's Training Schools asserted that "Validated Claimants and their families may be entitled individually and collectively to apologies."[75] The agreement left the details to be worked out later, including the type of apologies that would be made: "The Participants through the Committee will develop criteria to address the issues of entitlement, content, and timing of such apologies."[76] Subsequently a side agreement was reached, called the Helpline Companion Agreement, which entitled "any Validated Claimant ... to a personal apology ... tailored to meet his needs and the needs of his family" and institutional apologies from the Archbishops of Ottawa and Toronto and the Government of Ontario (the latter to be delivered through an all-party resolution proposed by the Premier of Ontario in the Legislature).[77]

The Agreement made between the Grandview Survivors Support Group (G.S.S.G.) and the Government of Ontario provided for both personal and public apologies to be made. It stated: "Each beneficiary will be entitled to receive an

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[73] Department of Canadian Heritage, *Final Report on the Implementation of the Japanese Canadian Redress Agreement, 1988* (Ottawa: Department of Canadian Heritage, November 1997) at 5.

[74] *Jesuit Apology*, *supra* note 35 at para. 2.03.

[75] *Helpline Agreement*, *supra* note 18 at para. 2.02.

[76] *Ibid.* at para. 2.02.

[77] *Ibid.* at paras. 4.02 & 4.03.

acknowledgement from the Government ... in a general form" and that the Attorney General would read it out in the Legislature "at an appropriate time".[78] The Agreement entitled each beneficiary, as well, after her claim was validated, "to receive an individual acknowledgement from the Government in a form to be agreed upon between the individual, the G.S.S.G. and the Government". However, the Agreement stipulated that delivery of this personal apology would be postponed until after the conclusion of all related criminal proceedings.[79]

The Reconciliation Agreement between the Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada stipulated that, upon request, "Every Validated Claimant is entitled to an individual apology from the Jesuit Fathers of Upper Canada."[80] As well, the Agreement required the Jesuit Provincial to publish an institutional apology (an official, public apology), using the text prescribed in Schedule "F".[81]

3. Involvement of Both Parties

The party making an apology should not do so unilaterally, without engaging the recipient in the process, if the apology is to be meaningful. Making a meaningful apology requires the wrongdoer and the injured party to enter into a dialogue. "An apology is not a soliloquy", notes Minow. "Instead, an apology requires communication between a wrongdoer and a victim; no apology occurs without the involvement of each party."[82]

So, even if an apology contains all the necessary ingredients it may still fail because both parties were not engaged in the process of developing it. As Lazare points out:

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[78] Grandview Settlement Agreement, the Grandview Survivors Support Group and the Government of Ontario, 1994, at para. 2.3.0 [hereinafter *Grandview Agreement*].

[79] *Ibid.* at para. 4.5.0.

[80] *Jesuit Apology*, *supra* note 35 at para. 2.03.

[81] *Ibid.* at para. 2.04.

[82] Minow, *supra* note 7 at 114.

> Ultimately, the success of an apology rests on the dynamics between the two parties, not on a pat recipe. The apology is an interactive negotiation process in which a deal has to be struck that is emotionally satisfactory to both involved parties.[83]

Survivors usually have a pretty clear notion of what their apology must say and how it must be delivered, in order for it to satisfy them. For example, Lawrence Norbert, Co-ordinator of the Grollier Hall Residential School Healing Circle, spelled out to federal government officials the survivors' views on apologising, at "exploratory dialogues" on out-of-court processes to settle claims of institutional child abuse. Later he reported back to the survivors:

> We advocated for apologies prior to or during an ADR [alternative dispute resolution] process, as healing from personal devastation of abuse cannot occur without apologies. We stated our position that:
>
> - every Residential School survivor is entitled to an individual apology from the Church;
> - the apology shall be extended, if requested, to the family;
> - it must be in writing and delivered to the Survivor;
> - it must acknowledge the courage of the Survivor in coming forward to disclose his abuse;
> - it must acknowledge the responsibility of the abuser(s) for their abuse;
> - it shall make it clear that the Survivor is not to be blamed or held responsible for his abuse; and
> - it shall indicate the desire of the Church and Canada to see that such abuse not happen again.[84]

Survivors want to be involved in shaping the contents of their apologies. The Reconciliation Agreement between the Primary Victims of George Epoch and the Jesuits Fathers of Upper Canada recognised and responded to this need. Paragraph 2.03 of the Agreement affirmed, "The content of each written apology shall comply with any reasonable request made, in advance, by the Claimant." Such requests were made using the "Request for Apology" form attached to the end of the agreement, on which each survivor could briefly note any particular statements he or she wanted to see

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[83] Lazare, *supra* note 4 at 43.

[84] L. Norbert, *Memo* (To The Boys on Alternative Dispute Resolution), Grollier Hall Residential School Healing Circle (Yellowknife: 27 October 1998) at 2. The "exploratory dialogue" meeting took place in Morley, Alberta, 21-22 October 1998.

included in the apology. In addition, the Agreement promised that certain content would be incorporated in all the individual apologies:

> As well as taking into account the expressed wishes of each Validated Claimant, the Individual Apology shall also:
>
> (i) acknowledge the courage of the victim in coming forward to disclose his abuse;
> (ii) acknowledge Epoch's responsibility for the abuse. This Individual Apology shall also make it clear that the victim is in no way to blame or is in no way responsible for the abuse;
> (iii) indicate a Jesuit commitment to the process of healing and reconciliation. This Individual Apology shall also indicate that the Jesuits' desire is to see that such abuse will never happen again.[85]

An apology, whether personal or public, that does not involve survivors, consider their needs and reflect their perspective, is bound to fail. Apologising must be an interactive and responsive process.

4. Attention to Who Delivers the Apology and How

Where the individual who committed the offence is prepared to apologise, it is not acceptable for a third party to make the apology on his or her behalf. Part of the obligation that comes with being accountable and taking responsibility for one's wrongdoing is to apologise personally for it. However, in cases of historic wrongs, where a government, church or other organisation bears responsibility for harmful acts or omissions that took place many years earlier, the officials who were then responsible for what happened may have long since vacated their offices. "For offenses whose impact is calamitous, to individuals, groups, or nations, the apology may be delayed by decades and offered by another generation."[86]

As a result, an official apology is usually made by a representative or agent of the offending institution who is not personally implicated in what happened but who by virtue of the office that he or she represents has a certain responsibility. Thus, Prime Minister Brian Mulroney apologised on behalf of the Parliament of Canada in 1988 for

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[85] *Jesuit Apology*, *supra* note 35 at para. 2.03(c).

[86] Lazare, *supra* note 4 at 78.

actions that caused people harm in the 1940s. Quebec Premier Lucien Bouchard apologised in March 1999 for the mistreatment of "orphans" during the 1940s and '50s — the Duplessis years. And Ontario Attorney General Charles Harnick apologised in 1996 for the abuse that occurred in St. John's and St. Joseph's Training Schools from the 1940s to the 1970s.

According to newspaper reports, several of the survivors of St. John's and St. Joseph's were angry because Premier Mike Harris, the head of the Ontario Government, did not deliver the Government's official, public apology.[87] Groups and individuals also expressed disappointment that the Government of Canada's apology in January 1998 to Aboriginal survivors of Residential Schools was only delivered by the Minister responsible for Aboriginal affairs. They felt the Prime Minister should have delivered the Statement of Reconciliation.[88] The Grand Chief of the Assembly of First Nations, Phil Fontaine, was granted an audience with the Pope at the Vatican in November 1998, to ask for an apology from the Roman Catholic Church for its role in Canada's Aboriginal Residential School system. But the audience was later cancelled due to "scheduling difficulties".[89]

When the person who delivers the official apology on behalf of an organisation or government is not considered to be *the* leader (the one person who is most accountable in the eyes of the recipients), they may feel they have not received a first-rate apology. An apology delivered by someone other than this leader is less meaningful for them.

In addition to paying close attention to who makes the official apology, how it is made or presented can also contribute to its success. For example, the printed apology

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[87] W. McCann, *Canadian Press Wire Service* "Ontario government apologizes to sex abuse victims" (25 June 1996), online: QL (CPN). The *Helpline Agreement*, *supra* note 18, suggested the Premier would deliver the Government's apology by stating in paragraph 4.03(d) "The Premier of Ontario will propose an all-party resolution in the Legislature acknowledging that abuse took place at the two institutions and apologizing for past abuse ... ."

[88] Mercredi, *supra* note 24. See also B. Wallace, "The Politics of Apology" *Maclean's* 111:3 (19 January 1998) at 33: "Jean Chrétien ...was not present when his government issued a formal apology to Canada's aboriginal peoples last week. Chrétien's absence was not lost on some chiefs, who grumbled that the apology lacked prime ministerial weight, was weakly worded and was not broad enough."

[89] E. Anderssen, "Native leader to seek apology from Pope on residential schools" *The Globe and Mail* (3 October 1998); "Vatican puts off Fontaine" *The Globe and Mail* (23 October 1998).

issued to Japanese Canadians who participated in the redress process was suitable for framing (printed on quality and standard-size paper). Therefore, it could easily be displayed, like an award or memento. Canada's coat of arms was featured at the top of the apology and the Prime Minister's signature at the bottom. These graphic elements were important symbols for the recipients because they stayed loyal to Canada, in spite of the personal hardship and indignities the country had imposed on them.

The apology, which St. Andrew's United Church of Alberni, British Columbia, presented to the Nuu-Chah-Nulth people whose lives were affected by the Alberni Residential School, is another example of careful attention being paid to how the message is delivered. The statement of apology, itself, was drafted with input from First Nations individuals, to ensure that it was acceptable to them. Then the apology was delivered at Maht Mahs, a large hall on the Shewish People's land, at an evening-long ceremony organised with the advice, guidance and collaboration of First Nations people. The apology ceremony included: the opening prayer by a Nuu-Chah-Nulth Elder; a reading out loud of the text of the apology by the church's Minister; the presentation of the framed statements of apology to all the Chiefs; and presentations of gifts from the congregation (blankets, hand-woven shawls, a tree, and money dedicated to the preservation of their language). A dinner was served, prepared by the congregation, and speeches, singing and the spontaneous sharing of stories and feelings took place.[90]

5. Reasonable Timing

The timing of an apology is critically important to survivors. Delays of months, years, and sometimes decades in issuing meaningful apologies can have serious consequences for victims of abuse who need this closure to heal. The longer it takes for an injured person to get a meaningful apology, once the call for an apology has been made, the more likely that person will begin to feel resentful or, worse, re-victimised. In addition, the longer the apologiser takes to apologise, the harder it may be to find words that work.

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[90] Description based on "Agenda for Presentation of the Apology" (May 1997) and background information provided by Shirley and Terry Whyte, of Alberni, BC, in a telephone interview (30 March 1999).

> [P]ersonal experience and a variety of descriptions from daily life suggest that the longer one waits following a call, the more difficult it is to apologize, the more carefully one's words must be chosen, and the less the apology is worth. ... In short, there is, so to speak, a tender moment following an offense which, if ... heedlessly prolonged, is likely to harden hearts rather than allow for salutary stirring of sorrow and forgiveness.[91]

On the other hand, when individual cases of institutional child abuse are resolved by formal processes, whether trials or non-court based reconciliation programs, the chance of apologising at the "tender moment" is artificially constrained by the processes themselves and the rules which govern them. In addition, the type of apologies that the injured party seeks can affect what is considered to be the most appropriate time to issue the apology. Apologies issued to individuals cannot be issued as quickly as apologies made to a group.

a. Timing Individual Apologies

In court based processes, if there is to be an apology made at all, it is likely to come only at the end of the trial, once the court has decided on guilt or liability. (The potential for an apology to an individual to be used as evidence in court against the defendant-apologiser is what drives this timing.) In non-court based redress processes, as well, the apology normally does not occur until all the other terms of settlement have been agreed to and the process is underway or near completion.

The timing of the apology, in the latter cases, is negotiated between the parties or built into the process that is established. For example, the Jericho Individual Compensation Program Guidelines promise "an apology letter from the Government of British Columbia within 1 month of sending the [release from liability and apology request] forms to the JIC Program".[92] The terms of reconciliation reached with survivors of the abuse of Father George Epoch stated that an individual apology "shall be delivered to the Validated Claimant within thirty (30) days of validation of the Claimant".[93]

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[91] Tavuchis, *supra* note 8 at 88.

[92] Jericho Individual Compensation (JIC) Program, *How to Make a Claim Yourself – Step by Step Guidelines* (Victoria, B.C.: 5 June 1997) "Step 9" at 18 [hereinafter *Jericho Claim Guidelines]*

[93] *Jesuit Apology*, *supra* note 35 at para. 2.03.

Deferring an individual's apology until shortly after his or her claim is settled means that the closure brought by an individual apology is postponed, which is a delay that can be difficult for a survivor to endure. On the other hand, the wrongdoer is in a position to apologise more effectively at this stage of the process because the facts of the abuse will have been exposed and can be fully acknowledged to the individual in his or her apology. Post-settlement delays in delivering individual apologies, which exceed the 30-day threshold, set out in the Jesuit and Jericho processes would be unreasonable, unfair and insensitive to survivors needs.

b. Timing Apologies to Groups

Practice has shown that apologies to a group of survivors can be made at an earlier stage of justice or reconciliation processes than apologies to individuals. For example, the federal Minister of Indian Affairs, Jane Stewart, issued the Statement of Reconciliation or apology to Aboriginal people while thousands of individual claims related to abuse in Residential Schools remained to be filed or settled. As well, the Jesuits' agreement with survivors of Father Epoch included the "Institutional Apology" or apology to all the "primary victims" as a schedule to the agreement itself. In both these examples, the group apology came in advance of steps to resolve individual claims.

In order to make a group apology, all the individuals affected who make up the collective do not need to be personally identified. As soon as it has been determined that abuse took place that affected a group, and the general scope of all the abuse is known, an apology can be made to the whole group. In addition, an official, public apology to a group tends to describe the wrongs done in more general terms than an individual apology. Therefore, this type of apology is unlikely to serve as probative evidence of liability in individual compensation claims and should not be used as an excuse to delay the apology until the individual claims are settled.

c. The Human Costs of Delayed Apologies - Some Examples

Unreasonable delays in responding to survivors' calls for apologies can have very serious and negative effects on individuals' efforts to heal. The survivors of sexual

abuse at Grandview Training School and Maple Leaf Gardens have suffered the costs of delay first hand.

i. The Grandview Experience

The reconciliation agreement between the Grandview Survivors Support Group and the Government of Ontario stipulated that each individual's apology would be "deferred until after the conclusion of the related criminal proceedings that may be undertaken ... ".[94] This delay was considered "essential".[95]

Criminal proceedings related to these individual cases of abuse wrapped up in 1998, seven years after police investigations began. As of the end of March 1999, several months after the criminal matters concluded, none of the survivors had yet received her personal apology from the Government of Ontario.[96]

Furthermore, as of the end of March 1999, the Grandview survivors had not received the public apology that the Agreement promised would be read out in the Ontario Legislature at the "appropriate time". For survivors needing to heal, the appropriate time to make this apology was long overdue.[97] One was, therefore, left to assume that the Government was judging the appropriate time according to its own agenda, not the needs of survivors.

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[94] *Grandview Agreement*, *supra* note 78 at para. 4.5.2.

[95] *Ibid.* at para. 4.5.2. Donna Lee, a Grandview survivor explained that the Government considered it essential to withhold the apologies in order to protect the accused perpetrators' "right to be presumed innocent until proven guilty," entrenched in the *Canadian Charter of Rights and Freedoms*, s. 11(d), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (U.K.), *1982*, c. 11, [hereinafter *Charter*]. The same Government that would be making the apologies to individual survivors, according to the *Grandview Agreement*, *supra* note 78, would also be prosecuting the accused offenders for sexual assault. It appears the Government feared the apologies, if given before trials were over, would be used as evidence to establish that the accused offender had lost his right to be presumed innocent. Telephone interview with Donna Lee (29 March 1999).

[96] Ontario's Attorney General, Charles Harnick, did send individual letters of apology to Grandview survivors in May 1999 (Ministry of the Attorney General, Office of the Minister, Toronto).

[97] As noted above, group apologies can be made before individual apologies and should be made at an early stage of the reconciliation process. The reason given for postponing the individual apologies to Grandview survivors cannot be extended to the group apology scenario. In apologising to the group, the Government would not be expected to acknowledge the particular injuries or harms done to specific individuals by an accused. Instead, the Government would be expected to apologise for its role in not adequately protecting the girls at Grandview against physical and sexual abuse and to affirm the steps it would take to redress the wrong for which it was responsible.

The Government's tardiness in issuing personal and official, public apologies to the Grandview survivors exacted a toll on many of the women involved.[98] They felt bitter disappointment, anger, and frustration, and that the Government had let them down again:

> "I won't feel relieved until I get a letter of apology and public apology. Only then will I feel complete closure."
>
> "I wanted an apology which I still haven't received."
>
> "To me it's not finished until we get an apology."
>
> "I don't feel validated because I got a few bucks. I haven't got a real letter of apology."
>
> "Several letters you receive say you will get an apology. When? When we all die?"[99]

ii. The Lesson of Martin Kruze

Martin Kruze jumped to his death from Toronto's Bloor viaduct in October 1997. He was the first person to publicly disclose the years of sexual abuse he suffered at the hands of George Hannah and Gordon Stuckless, former employees of Maple Leaf Gardens. "Martin Kruze got in death what he never got in life: a full apology from Maple Leaf Gardens and a vow that managers at the hockey shrine would strive to make sure no other children would be sexually abused within the building."[100]

Kruze committed suicide three days after Stuckless was sentenced to two years less a day for his crime. Hannah could not be charged; he had died in 1984. With 10 outstanding civil suits against the Gardens, Maple Leafs management had been holding off making a public apology to all the victims. Kruze's death caused them to reconsider. The Leafs owner, Steve Stavro, delivered the official apology to Kruze's family and other victims three months after the suicide.

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[98] D. Leach, *Evaluation of The Grandview Agreement Process: Final Report* (Ontario: Ministry of the Attorney General, June 1997) at 67: "The Agreement process will never be finished until women receive their individual acknowledgment of abuse. They will not think the government has followed through until they receive their "apology."

[99] Feldthusen, Hankivsky & Greaves, *supra* note 2 at text accompanying note 26.

[100] M. Ulmer, "Abuse victims get apology from Gardens" *Ottawa Citizen* (24 January 1998).

6. Plain, Clear and Direct Language

The language of an official apology is deliberately chosen and carefully measured. Each sentence is crafted "by anonymous authors ... with minimal qualification or elaboration in order to avoid ambiguity or further offense and to ensure the good faith of the offending party".[101]

The language used in an apology must be plain, clear and direct. A meaningful apology is crafted to help the injured person. An apology must sound natural and sincere, as if it comes from the heart of the wrongdoer and not from the pen of a lawyer or an indifferent third party. It must describe the facts, such as the wrongs committed and their impact, in a straightforward manner and not dance around the truth.

Ordinary words must be used that can be fully understood by everyone and appreciated without having specialised knowledge. Using plain language also means avoiding flowery, imprecise speech. Metaphorical flourishes may please the ear and the mind's eye, but they will not please the heart if their message is unclear. Vague statements frustrate the injured party's need to have clear and direct acknowledgement of the wrongs done and their impact. Vague expressions also risk being seen as deliberate or unconscious attempts to avoid taking responsibility. They suggest the apologiser does not really want to make an apology.

The following two apologies were offered more than ten years apart to Aboriginal people for the United Church's involvement in the Indian Residential School system. Compare them for plain, clear and direct language.

1. We confused western ways and culture with the depth and breadth and length and height of the gospel of Christ.
We imposed our civilization as a condition of accepting the Gospel.
We tried to make you like us and in doing so we helped to destroy the vision that made you what you were. As a result, you, and we, are poorer

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[101] Tavuchis, *supra* note 8 at 100.

> and the image of the Creator in us is twisted, blurred and we are not what we are meant by God to be.[102]
>
> 2. On behalf of the United Church of Canada I apologize for the pain and suffering that our church's involvement in the Indian Residential School system has caused. We are aware of some of the damage that this cruel and ill-conceived system of assimilation has perpetuated on Canada's First Nations peoples. For this we are truly and most humbly sorry.[103]

7. Cultural Sensitivity

Since a meaningful apology is made primarily to help an injured party heal, it must respect and reflect the culture of the recipient. A recipient's cultural heritage can have a direct influence on what she or he expects from an apology. For example, Hiroshi Wagatsuma and Arthur Rosett note: "the Japanese view an apology without an acceptance of fault as being insincere, while an American is more likely to treat an exculpatory explanation as the equivalent of an apology ... ".[104] Based on these observations about cultural differences, it may be concluded that an American could be satisfied by a simple excuse or explanation for why the injury occurred, while a Japanese person would not be satisfied unless the apologiser also accepted responsibility for the wrong that occurred.

An apology presented only from the cultural perspective of the apologiser could alienate a recipient who does not share the same beliefs or it could engage and validate a person who does. For example, if an institutional apology made by a Christian church were laden with Christian terminology and a Christian religious perspective, such an

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[102] "Apology to First Nations," The 31st General Council, United Church of Canada, August 1986, online: The United Church of Canada <http://www.uccan.org/HFApology.htm>(date accessed: 28 October 1998).

[103] See *United Church 1998 Apology*, *supra* note 35. The Moderator of The United Church of Canada, the Right Reverend Bill Phipps, expressed these words of apology while announcing the United Church's decision to prepare a formal apology in consultation with representatives of First Nations congregations and others. This announcement flowed from a motion of the Executive of General Council: "That the Executive of General Council name a group of 4-5 people and authorize them to prepare the full text of the apology and to determine the process for its delivery. In this, consultation should be undertaken with representatives of First Nations congregations, the Division of Mission in Canada and the church's solicitors." See United Church of Canada, Executive of General Council, "The Motions of the Executive of General Council" (23-26 October 1998).

[104] Wagatsuma & Rosett, *supra* note 43 at 473.

apology might engage and validate a Christian recipient or alienate and offend a person holding other religious or spiritual beliefs.

The Presbyterian Church of Canada's 1994 Apology to the Aboriginal Peoples of Canada takes into account both the Christian and Aboriginal perspectives. For example, it notes: "In our cultural arrogance we have been blind to the ways in which our own understanding of the Gospel has been culturally conditioned, and because of our insensitivity to Aboriginal cultures, we have demanded more of Aboriginal peoples than the gospel requires, and have thus misrepresented Jesus Christ ... ." It also goes on to acknowledge: "The Presbyterian Church in Canada used disciplinary practices which were foreign to Aboriginal peoples, and open to exploitation in physical and psychological punishment beyond any Christian maxim of care and discipline."[105]

Language is an integral aspect of culture and, therefore, an apology should be in the first language of the recipient. Former Prime Minister Mulroney's apology on behalf of Parliament to Japanese Canadians was printed in English and in Japanese. British Columbia Attorney General Colin Gablemann's speech apologising to the survivors of Jericho Hill School was simultaneously interpreted into American Sign Language.[106] For the Aboriginal peoples of northern Ontario, the federal government's Statement of Reconciliation to Aboriginal peoples was translated into Oji-Cree, to mark the one-year anniversary of *Gathering Strength.*[107]

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[105] *Presbyterian Apology*, *supra* note 35 at paras. 4 and 5.

[106] *B.C. Hansard*, *supra* note 35.

[107] *Wawatay News* (14 January 1999) at 6.

V. Comparing Apologies Made through Court Based and Non-Court Based Legal Processes

A. Court Based Processes

> [T]o apologize sincerely is a potentially stupid and costly gesture, especially when the offense is a serious one.[108]

> The lack of apology isn't neutral: it has an effect. An aggrieved party ... feels that the offence is magnified when it goes unacknowledged. ... A frank explanation, accepting responsibility where appropriate, can do nothing but good. In some fairly trivial cases, it will deter the claim. [In a damning case], where it's fruitless to deny liability, an early admission will reduce costs.[109]

1. Apologies as Admissions of Guilt or Liability

Legal actions, and the threat of legal actions, tend to have a chilling effect on apologising. Since the role of defence lawyers is to protect their clients' interests (to win the case or do their best to minimise punishment or liability), normally they will discourage their clients from apologising for an alleged wrongdoing. At least, they will recommend against apologising until the matter has been officially decided or settled and the client has been found to be responsible.

"Every solicitor has advised a client to make no admission, even where the negligence, or worse, is glaringly obvious. We generally go on to add a caution about what might be construed as an admission, including offering an apology", noted Trevor Aldridge, a UK solicitor and former law commissioner.[110] The possibility that the courts might treat a defendant's words of apology as an admission of liability or guilt, therefore, is an incentive for a defendant engaged in adversarial proceedings not to apologise.[111]

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[108] Tavuchis, *supra* note 8 at 95.

[109] T. Aldridge, "Say sorry – It's a costly mistake to deny obvious liability" *Solicitors Journal* (23 May 1997) at 486.

[110] *Ibid.*

[111] Wagatsuma & Rosett, *supra* note 43 at 483.

Since apologies are foreign to the win-lose dynamic of adversarial court proceedings, lawyers might also react to demands for apologies with suspicion. Could they be a trick or a trap?[112] The win-lose focus of adversarial processes shifts a defendant's attention away from moral concerns (such as whether apologising would be the right thing to do) and toward defensive strategies and manoeuvres to secure victory:

> While fear of admission drives lawyers' objections to apologizing, litigation culture creates additional pressure antithetical to apology. The legalization of disputes shifts the parties' focus away from private moral concerns to strategic manoeuvres and legal consequences.[113]

Moral concerns can prevail, however, over legal ones, even once the battle lines are drawn and a "case" is before the courts. With ten outstanding civil suits against Maple Leaf Gardens, Toronto Maple Leafs' owner Steve Stavro apologised to survivors for the sexual abuse they suffered as children at the hands of Gardens' employees. Ken Dryden, the Leafs' president and general manager, addressed the possibility that some people might interpret the hockey club's apology as an admission of liability. He said, "The regret we feel cannot be understood as an admission of legal liability. That is for the courts to decide."[114]

An apology made before or during a proceeding certainly could find its way into the reams of evidence admitted by the court. But, even if it does, whether it will have any persuasive force, as proof of the defendant's responsibility will depend, ultimately, on what was said in the apology. For example, it will depend on whether it included particular acknowledgements, confessions or admissions of wrongdoing and whether these specific statements help to establish any of the elements of the case that must be proven.[115]

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[112] D. Levi, "The Role of Apology in Mediation" [1997] N.Y.U.L. Rev. 1165 at 1187.

[113] *Ibid.* at 1188.

[114] Ulmer, *supra* note 100.

[115] Some American legal commentators have suggested that apologies may not hurt a defendant's case, in fact they might help. See for example, P. Rehm & D. Beatty, "Legal Consequences of Apologising" (1996) 1 Journal of Dispute Resolution 115 at 118:

> Admissibility into evidence does not necessarily mean useful as evidence of guilt. Since an apology usually can be admitted into evidence, and because some plaintiffs choose to understand an apology as an admission of guilt, it seems safe not to apologize. [American] case law suggests, however, that courts do not see it this way. Judges and juries seem to like apologies and treat them favorably. Often,

Since acknowledging responsibility and naming the offences committed are hallmarks of a meaningful apology, making a meaningful and successful apology could jeopardise one's defence in a court case. As a result, the conventional legal wisdom (not to apologise) would seem to be sound advice for a defendant whose only goal is to avoid criminal culpability or civil liability.

The possibility that an apology could be used as evidence of a defendant's guilt or liability, however, does not mean a defendant can never apologise. For example, apologies can be and sometimes are made after a criminal trial is over. In particular types of civil actions, such as cases of defamation and in human rights cases, defendants sometimes make formal apologies. Last but not least, apologies certainly are a central feature in non-court based settlement or alternative dispute resolution processes.

2. Apologising for Criminal and Other Offences

Any person who is charged with an offence has the right not to be compelled to be a witness against himself or herself in criminal proceedings related to that offence. In other words, an accused person cannot be forced to make statements or admissions that could be self-incriminating. This principle of law is entrenched in the *Canadian Charter of Rights and Freedoms*.[116] Consequently, a person charged or convicted of committing any crimes related to the abuse of a child cannot be compelled to apologise.

This right not to incriminate oneself, hence not to apologise for one's offences, extends even to the most horrible crimes. Judge Lang remarked on this right in sentencing Brother English, an Irish Christian Brother who committed gross and indecent sexual assaults against children at Mount Cashel Orphanage:

> I have been in the law now for 30 years, and this is my eleventh year as a judge and about my 85th jury trial; and I should say this has been the worst trial I've had to preside over. ... I had wished and hoped that Brother English would have said that he was guilty and that he couldn't help what he was doing and ask for

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an apology does nothing to satisfy the plaintiff's burden of proof.

[116] *Charter* , *supra* note 95, s. 11(c).

> forgiveness and show some remorse; but it was your right not to say ... maybe there are reasons.[117]

Before pronouncing sentence, judges ask convicted offenders if they wish to say anything. For those offenders who wish to do so, this moment provides an opportunity to apologise to their victims. Sometimes the offender will turn down this opportunity, as was the case when Kenneth Walker, a former guard at Grandview Training School was sentenced for sexually assaulting five girls who attended that school.[118] In other cases, the offender will seize this moment to make an apology.

Francis Clancy, convicted of assaulting two boys when they were living at Mount Cashel Orphanage, declared before sentencing: "I'm sorry for the trouble I put them through. I'm very sorry gentlemen, for offending you."[119] Judge Power counted Clancy's apology to his victims as a factor in his favour during sentencing. He was ordered to serve two months in prison and to be placed on probation for two years.[120]

Although the courts provide convicted offenders with the opportunity to apologise to their victims and usually look favourably upon statements of regret in passing sentence, apologies made at this stage of the criminal process can be totally self-serving and may contain no real remorse. For example, Michael Harris, writing about the tragedy at Mount Cashel, relates the story of Father Hickey who declared at his sentencing: "I realise the pain and sorrow I have caused people ... my remorse will stay with me for the rest of my life." Judge Reginald Reid, unmoved, sentenced him nonetheless to five years in prison. "Nearly a year later, the incarcerated priest would make clear to Sister Nuala Kenny during a prison visit that he felt no remorse, only a bitter conviction that he had been wronged by the system."[121]

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[117] *R.* v. *English* (1991), 95 Nfld. & P.E.I.R. 147, 301 A.P.R. 147 at paras. 5 - 6. Brother English was convicted of thirteen counts (nine of indecent assault, two of gross indecency and two of assault causing bodily harm).

[118] "Former Guard Found Guilty of Sex Assault" *Canadian Press Wire Service* (26 June 1998), online: QL (CPN).

[119] B. Belec, "Ex-Cashel Worker Guilty, Apologizes to Victims" *The Evening Telegram* (21 October 1998).

[120] *R.* v. *Clancy* (10 November 1998) (Nfld. Prov. Ct., Power, J.)[unreported].

[121] M. Harris, *Unholy Orders - Tragedy at Mount Cashel* (Markham, Ont.: Penguin Books, 1990) at 12.

In addition to expressing remorse at the time of sentencing, convicted offenders have also apologised to their victims by participating in alternative sentencing or restorative programs. CBC Radio's program *Tapestry* featured a documentary on "Apologies", which described how a rapist apologised to his victim 10 years after the incident with the support of a victim-offender mediation program, administered through the correctional service.[122] Judge Cunliffe Barnett, summarising some British Columbia cases where alternative sentencing methods were used by Native communities, described one instance where a "washing feast" was the process through which the offender apologised to everyone he had hurt:

> *R.* v. *B.(A.)*, November 1993, Bella Bella (BB #348). While drunk B.(A.) had sexually assaulted a little girl in her home. He was found guilty following a trial and was told that an "ordinary" sentence would be a jail term of about 4 months. The Crown prosecutor was initially opposed to any form of alternative sentencing but when it became clear that the suggestion was supported within the community he relented. B.(A.) hosted a "washing feast" which was well attended and during which he stood and apologized to the victim, her family, and the whole community. He then appeared in court and the passing of sentence was suspended.[123]

All these examples illustrate that apologies can be made in the context of criminal trials. However, they will not normally be expressed until after the defendant has been convicted.

The question of whether or not a court can order an offender to apologise has been addressed by at least one court, not in the context of a criminal offence but in a situation where an environmental offence was committed. The Northwest Territories (NWT) Territorial Court ordered a corporation run by the government of the NWT to pay a fine and publish an apology in the newspaper, after the Corporation caused an oil spill in Hudson's Bay.[124] The Corporation was found to have committed an offence under the *Fisheries Act*. The Court, having the power under that Act to punish the offender or make any other order that, "in the opinion of the court, will or is likely to prevent the

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[122] "Apologies," *supra* note 31, Part 1.

[123] C. Barnett, "Circle Sentencing / Alternative Sentencing" (1995) 3 C.N.L.R. 1 at 6.

[124] *R.* v. *Northwest Territories Power Corporation* (1989), 5 C.E.L.R. (N.S.) 57 at 66 (N.W.T. Terr. Ct.).

commission of a further offence",[125] decided to force the seemingly unrepentant directors of the Corporation to publish a public apology for their negligence.

However, the Court's order to apologise was appealed by the Corporation and overturned by the NWT Supreme Court.[126] The higher court said it recognised the virtue of an apology given freely by an offender on the path towards reform of his or her behaviour. But it considered an apology imposed by an order of the court to be a type of punishment that it did not have the legal authority to exact:

> Extracted on demand, ... a grudging so-called apology is plainly no more than a reluctant concession to an opponent possessing, for the time being, an overwhelming advantage of some sort. It is all too likely to be regarded primarily as a form of unjust humiliation and not necessarily as a vindication of what is right. In consequence, it has little of the value of the apology freely given out of genuine remorse. It is seen by the offender, and no doubt by others, as a form of punishment and not of contrition.
>
> ...
>
> [A]n apology can be a constructive and positive step in the rehabilitation of the offender and the restoration of peace in the community. This is particularly important in the many small communities of the Northwest Territories. I do not wish to be thought to say that a public apology should never be made, whether as recognized in the terms of a probation order or otherwise. The point I make is that no apology should be coerced, whether by Court Order or otherwise, as part of the sentencing process. After all, an apology which is not freely given lacks all the characteristics of a genuine apology and is surely worthless as such. If judicially coerced, it will undoubtedly tend, sooner or later, to bring the administration of justice into disrepute.[127]

3. Apologising in Civil Cases

At common law, in civil or private law suits where plaintiffs sue defendants for the harm they caused them, money is traditionally awarded to compensate for the injury or loss suffered. Apologies are not generally extracted from a defendant and awarded to a plaintiff to help compensate for an injury or loss. Quebec civil law (droit civil) may afford more options than the common law, in terms of non-financial remedies:

> In civil law, the victim of an extracontractual wrong may request more than an equivalent remedy, i.e. pecuniary damages. The victim may request a specific

[125] R.S.C. 1985, c. F-14, s. 41(2).

[126] *R.* v. *Northwest Territories Power Corporation* (1990), 5 C.E.L.R. (N.S.) 67 at 80 (N.W.T.S.C.).

[127] *Ibid.* at 75 - 77.

> performance remedy ... nothing in civil law prevents the plaintiff from requesting a remedy over and above damages. The civil law position could influence common law.[128]

Some tribunals, which have been granted fairly broad and flexible powers by their enabling legislation to impose non-monetary awards where appropriate, can order defendants to make amends by apologising. Human rights tribunals, for example, have this power and exercise it in cases where they find an apology would be appropriate to help restore the dignity or validate the hurt feelings of a person who has been a victim of discrimination.

Decisions of the Canadian Human Rights Tribunal, operating under the authority of the *Canadian Human Rights Act,* provide a number of examples of cases where defendants (called "respondents" in these cases) have been ordered to provide letters of apology. The Commissioner of the Correctional Service of Canada, in 1994, was ordered to apologise to Julius Uzoaba for discriminating against him in the course of his employment because of his race and colour. An apology was considered appropriate in this case, since the respondent-employer had acted in a particularly insensitive manner.[129] In another case, the National Research Council of Canada was ordered to provide a written apology to the complainant, Chander Grover, for discriminating against him because of his race, colour and national origin.[130]

The main role that apologies play in civil cases, however, is not that of a remedy or a form of non-monetary compensation. Rather, apologies or lack of remorse are factors to be considered in assessing the monetary damages awarded in certain cases.

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[128] Letter from Louise Langevin to the Law Commission of Canada on the Ministerial Reference on Institutional Child Abuse (21 January 1999) Faculté de Droit, Université Laval, Québec.

[129] *Uzoaba* v. *Correctional Service of Canada* (1994), 26 C.H.R.R. D/361 at D/422 (C.H.R.C.).

[130] *Grover* v. *National Research Council of Canada* (1992), 18 C.H.R.R. D/1 at D/55 (C.H.R.C.). Other orders to apologise are found in: *Radovanovic* v. *Via Rail Canada Inc.* (1994), 26 C.H.R.R. D/149 at D/162 (C.H.R.C.); *Brown* v. *Department of National Revenue (Customs and Excise)* (1993), 19 C.H.R.R. D/39 at D/61 (C.H.R.C.); *Canadian Paraplegic Association* v. *Elections Canada* (1992), 16 C.H.R.R. D/341 at D/376 (C.H.R.C.); *Naqvi* v. *Canada Employment and Immigration Commission and Department of External Affairs* (1993), 19 C.H.R.R. D/139 at D/171 (C.H.R.C.). Whether these apologies had any restorative or healing effect is not known. The apologies in these cases are imposed by the tribunals and prepared unilaterally by the respondents, without consulting the injured party about the wording and contents.

If an apology is made, this could mitigate financial damages. If an apology is denied or no remorse is shown, this could lead to an increased financial award. In any event, an apology is a consideration; but, it is not typically used by the courts as a remedial tool.

Cases of defamation and cases where the plaintiff asks for punitive damages illustrate the limited way that apologies can come into play in some civil or tort actions. The publication of an apology or the offer to publish an apology will not absolve a defendant who has defamed a plaintiff and tarnished his or her public reputation. However, a defendant who quickly publishes an apology and retraction of the defamatory statement may find that he does not have to reach quite as far into his pocket to compensate the plaintiff.[131]

Punitive damages are often requested in tort cases involving child physical and sexual abuse. Whether or not they are awarded can turn, among other considerations, on whether or not the defendant showed remorse or apologised. For example, two adult children sued their stepfather for sexual abuse inflicted upon them over a period of seven years and were awarded $30 thousand each in punitive damages because he showed no remorse.[132] In the case of a young woman who was wrongfully sterilised at training school, the Court declined to award punitive damages (even though they were warranted by the actions that led up to the sterilisation) because the defendant Government of Alberta had waived its defence that the limitation period had expired. Without this concession, the case would not have been able to proceed. The Court stated, "This deliberate abandonment of a complete defence is in the nature of an apology. Indeed, it is more than an apology: it is ... a real effort to make things right."[133]

4. Healing Potential of Court-ordered Apologies

In spite of the fact that tribunals or courts sometimes can "order" apologies, the practical question arises whether an apology that is imposed by a tribunal is very useful

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[131] For example, *Tornberg* v. *Worrell*, [1995] A.J. No. 1312 (Q.B.), online: QL, and *Snider* v. *Calgary Herald* (1985), 41 Alta. L.R. (2d) 11.

[132] *K.A.T.* v. *J.H.B.*, [1998] B.C.J. No. 1141 (B.C.S.C.), online: QL.

[133] *Muir* v. *Alberta* (1996), 132 D.L.R. (4th) 695 (Alta. Q.B.) at para. 153.

from a healing perspective. Remorse cannot be produced by command of the court; it has to come from the heart of the wrongdoer. "As any parent who has tried to teach a child to apologize knows, ... the problems with [an involuntary] apology include insincerity, an absence of clear commitment to change, and incomplete acknowledgement of wrongdoing."[134]

When an apology is given voluntarily during a court based process, the rules and nature of the process limit it. In court, apologies tend to occur only after guilt or liability is clearly established. These delayed apologies may be too little too late for victims. Also, when apologies are made, they may be fuelled by ulterior motives, such as obtaining a more lenient sentence or avoiding punitive damages. Such apologies would probably not be meaningful for the survivor and would more likely hinder the healing process than help it. Occasionally, a truly meaningful apology will emerge through a court based process, but normally court processes do not lead to healing apologies.

B. Non-Court Based Processes

> No court is going to issue an apology. No court is going to go into the issue of public education and prevention and research into child abuse or provide benefits to the families and widows of these guys. We concluded that it wouldn't heal us or reconcile us.[135]

Apologies play a limited role in criminal and civil actions. The conciliatory nature of apologies is also antithetical to adversarial processes. From this one may conclude that traditional legal processes are unlikely to result in the delivery of meaningful apologies. Non-court based, alternative dispute resolution (ADR) processes offer greater hope and potential for a genuine apology process to unfold.[136] This was the gamble Grandview survivors took in choosing an alternative dispute resolution ADR process:

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[134] Minow, *supra* note 7 at 112.

[135] *Boys Don't Cry*, *supra* note 1 at 175.

[136] Wagatsuma & Rosett, *supra* note 43 at 495: "A process built around apology and compensation would fit well into a justice system that increasingly seeks to resolve conflicts by settlement, mediation, or alternative methods of dispute resolution, rather than trial. " [citing Menkel-Meadow].

> Most individuals felt that because the overall goal of the Agreement had to do with remediation and reconciliation with the community, one of its most important features was the acknowledgement by the government of the abuse and the recognition that the women were harmed and not to blame. They felt that such an acknowledgement at a government level could not have happened under an individualized litigation approach.[137]

The main advantage of seeking apologies through non-court based or ADR reconciliation processes is that the nature and terms of the apologies that will be provided can be negotiated and agreed to from the outset. Issues that can be clarified through joint agreement include, for example:

- that the parties recognise and affirm the importance of apologising and will work together to ensure that the apologies produced are meaningful;
- that the parties agree that the apologies made will not be presented or used as admissions of liability in other legal processes;[138]
- the type of apologies (individual, official-public, or both) that will be offered, as well as when, how and by whom the apologies will be made; and
- the mechanism whereby survivors will be able to opt in or out of receiving a personal apology and the means that will be used to ensure that they have input into shaping the content of their respective apologies.

Although the prospect of receiving a meaningful apology seems to be greater using alternative redress processes rather than court based processes, they too have shortcomings.

The tenderness of informal, heart-to-heart apologies will not be achievable through these processes, which by virtue of being part of a larger legal process, are to some degree bureaucratised, formalised and carefully scripted. So, the opportunity is not great for truly personal and moving apologies — of the sort that involve the baring of the apologiser's soul and the shedding of tears — to occur. In addition, since the apologies are given as part of the full compensation package, their delivery is tied up with other details of the package. If the administration of a package does not run smoothly, the successful delivery of the apologies could be one of the casualties of

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[137] Leach, *supra* note 98 at 54.

[138] For example, *Helpline Agreement*, *supra* note 18 at para. 2.03: "No statement amounting to an admission of civil liability is contemplated as part of any apology to be delivered."; *Grandview Agreement*, *supra* note 79 at para. 10.5: "The parties acknowledge that this agreement does not amount to an admission of liability or the waiver of any defence that would be available in civil proceedings but for this Agreement."; *Jesuit Institutional Apology*, *supra* note 35 at para. 2.06: "No apology and nothing in this Reconciliation Agreement and the Schedules attached constitutes an admission of liability."

misadministration. One of the men involved in the Helpline Agreement reconciliation process pointed out this problem in looking back on what he experienced:

> I had to fight to get my medical and dental benefits, and I had to fight for counselling, both of which were to have been provided under the agreement. Then I had to fight for my apology. It made me realize that negotiating the deal was one thing and making it work is another.[139]

The biggest risk that survivors face is disappointment or further injury. They face this risk by asking for an apology in any context, legal or not. But, given the promise of a meaningful apology that these alternative redress processes can hold out, the possibility exists that, if the apology is a failure, the survivor may be let down hard.

It's one thing for a survivor to sign an agreement that makes commitments about apologies and a totally different thing for the survivor to receive a satisfactory apology. For example, a personal apology or "individual acknowledgement", which is neither individualised nor an acknowledgement, is bound to fail. The reaction of Gerry Stolz, a former student of Jericho Hill School, to his "individual acknowledgement" illustrates this point.

Gerry was one of three students from Jericho Hill School whose testimony helped convict Dr. Gallagher, the school's dentist, of indecent assault. The case went to the British Columbia Supreme Court.[140] Gerry's personal story of childhood sexual abuse became very public, but taking this action was necessary in order to expose the sexual abuse scandal at the school and to pave the way for the individual compensation program.

When the Jericho Individual Compensation Program was set up to redress the institutional abuse, Gerry again played an active role, for example contacting former blind and visually impaired students to make them aware of the program. As he went through the compensation program, he found the program people were supportive; they listened to his story and acknowledged what had happened. But the personal apology

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[139] David McCann in the epilogue to *Boys Don't Cry, supra* note 1 at 294.

[140] *R.* v. *Gallagher*, [1995] B.C.J. No. 1753 (sentencing decision), online: QL.

letter that Gerry received from the Attorney General, after his claim was accepted, was a form letter – a generic letter sent to all participants in the program. It did not acknowledge the particular harms he had experienced (though they were well documented), and it did not acknowledge or thank him for all his personal efforts.

Asked how he feels about this personal apology, whether it satisfied him or helped him, Gerry answers that he's not sure how to express how he feels. "It didn't do it ... it wasn't enough. At the same time, I go on with my life ... I'm doing fine... but it wasn't enough." The personal apology that he had hoped would bring closure did not; since it did not acknowledge his own experiences and contributions, it was not truly a personal acknowledgement.[141]

Lorne Siple, a survivor of sexual abuse at St. Joseph's Training School, was appalled by his letter of personal apology from the Christian Brothers. He played no role in shaping its content; it was prepared without consulting him; and one day it just arrived in the mail. It was a form letter; the same "personal apology" given to all the survivors of the school. It did not acknowledge his personal experiences. Lorne drew up a list for the Law Commission of what he thinks a personal apology should include:

- It should be addressed to the individual and not be a form letter;
- It should acknowledge the wrong done to the individual and promise this will never happen again; and
- It should ask for forgiveness (but not expect it, because they stripped away all my power and it must be my individual choice whether or not to forgive them).

"Without this type of apology, I don't believe forgiveness or reconciliation is truly possible", he said.[142]

These two examples demonstrate that, in practice, a non-court based legal process might not produce an apology that is any more meaningful than one generated

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[141] Telephone interview with Gerry Stolz (30 March 1999).

[142] Based on remarks which Lorne Siple made at the Law Commission of Canada's meeting of the Study Panel on Institutional Child Abuse, Hull (23 January 1999), written comments sent to the Law Commission (31 March 1999), and a telephone interview (31 March 1999).

through a court based process. Participants in these processes can walk away with personal or other apologies that leave them feeling re-victimised, hurt, offended, dissatisfied, bitter or angry. On the other hand, these processes do offer the potential to provide a healing apology. With an increased commitment to and understanding of the importance of apologising in a meaningful way, apologisers can ensure that this potential is realised.

VI. Conclusions

Court processes do not often lead to meaningful apologies. The uncertainty of whether an apology will be treated as an admission in court is a major obstacle to apologies occurring when legal actions are pending. Whether an apology actually would be considered an admission in court and contribute to a finding of guilt or liability will depend very much on the facts of an individual case and the nature of the apology made. However, the potential for this to happen is not unimaginable — especially if it is a meaningful apology, containing the key ingredients outlined in this paper.

Defendants cannot be compelled to apologise. They have the right not to incriminate themselves and to proclaim their innocence (in criminal matters) and to mount their best defence (in civil matters). On the other hand, failing to show remorse or to apologise can lead to a harsher sentence in criminal matters or to punitive damages in civil matters (where such damages are warranted).

Non-court based reconciliation processes are more likely than court based processes to satisfy survivors' moral rights and their need to receive meaningful apologies. Unfortunately, even though apologies can be made central to a reconciliation agreement, signing such an agreement does not guarantee that satisfactory apologies will result.

A promise or agreement to apologise must be followed by a serious commitment to produce a meaningful apology and engage the survivor in the process. This research paper has attempted to outline some of the basic elements of a meaningful apology and practical considerations to bear in mind in producing such an apology.

As a society, our understanding of the importance and intricacies of making meaningful and successful apologies is evolving. This paper is an overview, not an exhaustive account, of apologising for serious wrongdoing. More work needs to be done to better understand the interplay among social, psychological and legal issues related to apologising effectively.